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Regional Technical Coordinator
Midwest Region

Assistant Chief Counsel (Income Tax & Accounting)
CC:IT&A:1

Technical Coordination Report Submitted By:
Mr. David B. Nilles
District: Fargo

Recommendation: That sections 6041 and 3402(q) of the Code and proposed section 31.3406(e) of the regulations be amended to eliminate the requirement that the odds of winning be greater than 300 to 1 before information reporting is required.

The above recommendation is made following the conclusion of an information gathering project involving the reporting of gambling income by individuals in the Fargo District. The underreporting was in part a consequence of the lack of information returns being filed by the payors of the gambling winnings.

Section 6041 of the Internal Revenue Code generally requires reporting of payments of income if such payments aggregate \$600 or more in any calendar year.

Section 7.6041-1 of the Temporary Income Tax Regulations provides that every person making payment of winnings (including winnings exempt from withholding under section 3402(q)(5) of the Code) of \$1,200 or more from a bingo game or a slot machine play or \$1,500 or more from a keno game shall make an information return with respect to such payment. Form W-2G is prescribed for reporting payments under section 7.6041-1.

Section 3402(q) of the Code provides, in general, for the withholding of tax where the proceeds from wagering transactions are more than \$1,000, if the amount of the proceeds are at least 300 times as large as the amount wagered. Similarly, proceeds of more than \$1,000 from a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai are subject to withholding if the amount of such proceeds are at least 300 times as large as the amount wagered.

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times as large as the amount wagered.

Section 35a.9999-3, Q and A-19, of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, states that until further regulations are issued, gambling winnings in excess of \$600 are reportable only if the payout is based on betting odds of 300 to 1, or higher. A-19 states that the applicability of the odds requirement to information reporting and backup withholding is subject to study by the Service and is subject to change in further regulations.

Proposed section 31.3406(g)-2(e)(2) of the Employment Tax Regulations states that until further regulations are issued under section 6041 or section 3406, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is in excess of \$600 and is based on betting odds of 300 to 1, or higher.

The Technical Coordination Report states that the odds requirement of 300 to 1 eliminates information reporting for most kinds of gambling winnings. In particular, the odds requirement seems unjustified when a payout is large. The example is provided where a gambler wins \$20,000 on a \$5,000 wager. The Report states that the gambler's profit is \$20,000 because the amount of the wager is not considered part of the winnings.

Proposed section 31.3406(g)-2(e)(2) of the regulations provides that the amount of the reportable gambling winnings is the amount paid with respect to the amount of the wager reduced, at the option of the payor, by the amount of the wager.

Whether the gross amount of winnings or the profit from the wager is shown on Form W-2G does not detract from the main point of the Technical Coordination Report because expanded reporting would be an aid to enforcement of the tax laws. However, the fact that payors may only report the difference between the amount won and the wager reduces the usefulness of the Forms W-2G in narrow odds situations.

The proposed regulations under section 3406 of the Code are currently under review prior to being issued in final form. The Technical Coordination Report will be considered in addition to the public comments received on the proposed regulations. We have also given a copy of the Technical Coordination Report to Mark Ignasiak, IRP Compliance (EX:I:C, FTS 566-8628), who is currently working on a legislative recommendation regarding reporting of gambling winnings.

We appreciate Mr. Nilles' interest and initiative in submitting this report. Copies of this memorandum are enclosed for the Regional Technical Coordinator, the District Technical Coordinator, Mr. Nilles, and other interested parties.

(signed) John H. Coulter, Jr.

Glenn R. Carrington
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